



EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

June 21, 2013

**GOV. MSG. NO. 1260**

The Honorable Donna Mercado Kim,  
President  
and Members of the Senate  
Twenty-Seventh State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

The Honorable Joseph M. Souki,  
Speaker and Members of the  
House of Representatives  
Twenty-Seventh State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on June 21, 2013, the following bill was signed into law:

SB458 SD1 HD1 CD1

RELATING TO THE STATE EDUCATIONAL  
FACILITIES IMPROVEMENT SPECIAL FUND  
**ACT 157 (13)**

A handwritten signature in black ink, reading "Neil Abercrombie". The signature is written over the word "Signed" which is partially obscured.

NEIL ABERCROMBIE  
Governor, State of Hawaii

Approved by the Governor

on JUN 21 2013

THE SENATE  
TWENTY-SEVENTH LEGISLATURE, 2013  
STATE OF HAWAII

ACT 157  
S.B. NO. 458  
S.D. 1  
H.D. 1  
C.D. 1

## A BILL FOR AN ACT

RELATING TO THE STATE EDUCATIONAL FACILITIES IMPROVEMENT SPECIAL FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

### PART I

SECTION 1. Section 36-32, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) There is created in the treasury of the State the state educational facilities improvement special fund[, into which shall be deposited a portion of all general excise tax revenues collected by the department of taxation under section 237-31]. The special fund shall be used solely to plan, design, acquire lands for, and to construct public school facilities and to provide equipment and technology infrastructure to improve public schools and other facilities under the jurisdiction of the department of education, except public libraries. In addition, activities of the department of education intended to eliminate the gap between the facility needs of schools and available resources shall be eligible for funding from the special fund. Expenditures from the special fund shall be limited to projects authorized by the legislature for fiscal



1 years ending prior to July 1, 2016, and shall be subject to  
2 sections 37-31, and 37-33 through 37-40. Appropriations or  
3 authorizations from the special fund shall be expended by the  
4 superintendent of education.

5 (b) There is established within the state educational  
6 facilities improvement special fund a separate account, to be  
7 known as the lease payments for schools account, for lease  
8 payments required by financing agreements entered into prior to  
9 July 1, 2013, by the department of education pursuant to this  
10 section and sections 37D-2 and 302A-1506. The lease payments  
11 for schools account shall be funded by legislative  
12 appropriations and expended by the superintendent of education.  
13 Expenditures from the lease payments for schools account shall  
14 be exempt from chapters 103 and 103D and are restricted to lease  
15 payments on new schools included within the department of  
16 education's current six year capital improvement programs and  
17 for which:

- 18 (1) The legislature adopted a concurrent resolution  
19 directing the department of education to:  
20 (A) Build a new school in a specific geographic area  
21 using the design-build method; and



(B) Pursue the use of a financing agreement to build  
the new school; or

(2) The legislature appropriated planning and design funds  
and specified that the remainder of the costs  
necessary to complete the project are eligible for  
funding through a financing agreement;

provided that any school to which the legislature has  
appropriated planning and design funds prior to July 1, 2007,  
and for which a private developer is willing to enter into a  
lease-purchase agreement with the department of education within  
twelve months of July 1, 2007, is exempt from the requirements  
of [§] paragraphs [§] (1) and (2)."

SECTION 2. Section 237-31, Hawaii Revised Statutes, is  
amended to read as follows:

"§237-31 **Remittances.** All remittances of taxes imposed by  
this chapter shall be made by money, bank draft, check,  
cashier's check, money order, or certificate of deposit to the  
office of the department of taxation to which the return was  
transmitted. The department shall issue its receipts therefor  
to the taxpayer and shall pay the moneys into the state treasury  
as a state realization, to be kept and accounted for as provided  
by law; provided that:



1       ~~[-(1)]~~   ~~The sum from all general excise tax revenues realized~~  
2           ~~by the State that represents the difference between~~  
3           ~~\$45,000,000 and the proceeds from the sale of any~~  
4           ~~general obligation bonds authorized for that fiscal~~  
5           ~~year for the purposes of the state educational~~  
6           ~~facilities improvement special fund shall be deposited~~  
7           ~~in the state treasury in each fiscal year to the~~  
8           ~~credit of the state educational facilities improvement~~  
9           ~~special fund;~~

10       ~~-(2)]~~   (1)   A sum, not to exceed \$5,000,000, from all general  
11           excise tax revenues realized by the State shall be  
12           deposited in the state treasury in each fiscal year to  
13           the credit of the compound interest bond reserve fund;  
14           and

15       ~~[-(3)]~~   (2)   A sum from all general excise tax revenues  
16           realized by the State that is equal to one-half of the  
17           total amount of funds appropriated or transferred out  
18           of the hurricane reserve trust fund under sections 4  
19           and 5 of Act 62, Session Laws of Hawaii 2011, shall be  
20           deposited into the hurricane reserve trust fund in  
21           fiscal year 2013-2014 and in fiscal year 2014-2015;



1 provided that the deposit required in each fiscal year  
2 shall be made by October 1 of that fiscal year."

3 PART II

4 SECTION 3. Section 36-27, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6 "(a) Except as provided in this section, and  
7 notwithstanding any other law to the contrary, from time to  
8 time, the director of finance, for the purpose of defraying the  
9 prorated estimate of central service expenses of government in  
10 relation to all special funds, except the:

11 (1) Special out-of-school time instructional program fund  
12 under section 302A-1310;

13 (2) School cafeteria special funds of the department of  
14 education;

15 (3) Special funds of the University of Hawaii;

16 ~~[(4) State educational facilities improvement special fund,~~

17 ~~-(5)-] (4) Convention center enterprise special fund under~~  
18 section 201B-8;

19 ~~[(6)-] (5) Special funds established by section 206E-6;~~

20 ~~[(7)-] (6) Housing loan program revenue bond special fund;~~

21 ~~[(8)-] (7) Housing project bond special fund;~~

22 ~~[(9)-] (8) Aloha Tower fund created by section 206J-17;~~



- 1        [~~(10)~~] (9) Funds of the employees' retirement system created  
2                    by section 88-109;
- 3        [~~(11)~~] (10) Unemployment compensation fund established under  
4                    section 383-121;
- 5        [~~(12)~~] (11) Hawaii hurricane relief fund established under  
6                    chapter 431P;
- 7        [~~(13)~~] (12) Hawaii health systems corporation special funds  
8                    and the subaccounts of its regional system boards;
- 9        [~~(14)~~] (13) Tourism special fund established under section  
10                   201B-11;
- 11       [~~(15)~~] (14) Universal service fund established under section  
12                   269-42;
- 13       [~~(16)~~] (15) Emergency and budget reserve fund under section  
14                   328L-3;
- 15       [~~(17)~~] (16) Public schools special fees and charges fund  
16                   under section 302A-1130;
- 17       [~~(18)~~] (17) Sport fish special fund under section 187A-9.5;
- 18       [~~(19)~~] (18) Glass advance disposal fee established by  
19                   section 342G-82;
- 20       [~~(20)~~] (19) Center for nursing special fund under section  
21                   304A-2163;



1        [~~(21)~~] (20)    Passenger facility charge special fund  
2                    established by section 261-5.5;  
3        [~~(22)~~] (21)    Court interpreting services revolving fund under  
4                    section 607-1.5;  
5        [~~(23)~~] (22)    Hawaii cancer research special fund;  
6        [~~(24)~~] (23)    Community health centers special fund;  
7        [~~(25)~~] (24)    Emergency medical services special fund;  
8        [~~(26)~~] (25)    Rental motor vehicle customer facility charge  
9                    special fund established under section 261-5.6;  
10       [~~(27)~~] (26)    Shared services technology special fund under  
11                    section 27-43; and  
12       [~~(28)~~] (27)    Automated victim information and notification  
13                    system special fund established under section 353-136,  
14 shall deduct five per cent of all receipts of all special funds,  
15 which deduction shall be transferred to the general fund of the  
16 State and become general realizations of the State. All  
17 officers of the State and other persons having power to allocate  
18 or disburse any special funds shall cooperate with the director  
19 in effecting these transfers. To determine the proper revenue  
20 base upon which the central service assessment is to be  
21 calculated, the director shall adopt rules pursuant to chapter  
22 91 for the purpose of suspending or limiting the application of





1 the central service assessment of any fund. No later than  
2 twenty days prior to the convening of each regular session of  
3 the legislature, the director shall report all central service  
4 assessments made during the preceding fiscal year."

5 SECTION 4. Section 36-30, Hawaii Revised Statutes, is  
6 amended by amending subsection (a) to read as follows:

7 "(a) Each special fund, except the:

8 (1) Transportation use special fund established by section  
9 261D-1;

10 (2) Special out-of-school time instructional program fund  
11 under section 302A-1310;

12 (3) School cafeteria special funds of the department of  
13 education;

14 (4) Special funds of the University of Hawaii;

15 [~~4~~] ~~State educational facilities improvement special fund,~~

16 [~~6~~] (5) Special funds established by section 206E-6;

17 [~~7~~] (6) Aloha Tower fund created by section 206J-17;

18 [~~8~~] (7) Funds of the employees' retirement system created  
19 by section 88-109;

20 [~~9~~] (8) Unemployment compensation fund established under  
21 section 383-121;



1       ~~[(10)]~~ (9) Hawaii hurricane relief fund established under  
2                   section 431P-2;  
3       ~~[(11)]~~ (10) Convention center enterprise special fund  
4                   established under section 201B-8;  
5       ~~[(12)]~~ (11) Hawaii health systems corporation special funds  
6                   and the subaccounts of its regional system boards;  
7       ~~[(13)]~~ (12) Tourism special fund established under section  
8                   201B-11;  
9       ~~[(14)]~~ (13) Universal service fund established under section  
10                  269-42;  
11       ~~[(15)]~~ (14) Emergency and budget reserve fund under section  
12                  328L-3;  
13       ~~[(16)]~~ (15) Public schools special fees and charges fund  
14                  under section 302A-1130;  
15       ~~[(17)]~~ (16) Sport fish special fund under section 187A-9.5;  
16       ~~[(18)]~~ (17) Center for nursing special fund under section  
17                  304A-2163;  
18       ~~[(19)]~~ (18) Passenger facility charge special fund  
19                  established by section 261-5.5;  
20       ~~[(20)]~~ (19) Court interpreting services revolving fund under  
21                  section 607-1.5;  
22       ~~[(21)]~~ (20) Hawaii cancer research special fund;



1       ~~[(22)]~~ (21) Community health centers special fund;  
2       ~~[(23)]~~ (22) Emergency medical services special fund;  
3       ~~[(24)]~~ (23) Rental motor vehicle customer facility charge  
4               special fund established under section 261-5.6;  
5       ~~[(25)]~~ (24) Shared services technology special fund under  
6               section 27-43;  
7       ~~[(26)]~~ (25) Nursing facility sustainability program special  
8               fund, ~~[+]~~under Act 156, Session Laws of Hawaii  
9               2012~~[+]~~;  
10       ~~[(27)]~~ (26) Automated victim information and notification  
11               system special fund established under section 353-136;  
12               and  
13       ~~[(28)]~~ (27) Hospital sustainability program special fund  
14               under ~~[+]~~Act 217, Session Laws of Hawaii 2012~~[+]~~,  
15 shall be responsible for its pro rata share of the  
16 administrative expenses incurred by the department responsible  
17 for the operations supported by the special fund concerned."

18       SECTION 5. Section 37D-2, Hawaii Revised Statutes, is  
19 amended by amending subsection (a) to read as follows:

20       "(a) There is hereby established and authorized the  
21 financing agreement program of the State. Any agency desiring  
22 to acquire or improve projects through the financing agreement



1 program established and authorized by this chapter shall submit  
2 a written request to the department providing any information  
3 that the department shall require. Notwithstanding any other  
4 law to the contrary, and except for the Hawaii health systems  
5 corporation and its regional system boards, only with the  
6 approval by the attorney general as to form and legality and  
7 upon the written request of one or more agencies may the  
8 department enter into a financing agreement in accordance with  
9 this chapter, and only with the approval by the attorney general  
10 as to form and legality, and by the director as to fiscal  
11 responsibility, and upon the written request of an agency, the  
12 agency may enter into a financing agreement in accordance with  
13 this chapter, except that ~~[the department of education may enter~~  
14 ~~into a financing agreement in accordance with section 36-32 with~~  
15 ~~the concurrence of the director and with the approval of the~~  
16 ~~attorney general as to form and legality, and that]~~ the board of  
17 regents of the University of Hawaii may enter into a financing  
18 agreement in accordance with this chapter without the approval  
19 of the director and of the attorney general as to form and  
20 legality if the principal amount of the financing agreement does  
21 not exceed \$3,000,000. A financing agreement may be entered  
22 into by the department on behalf of one or more agencies, or by



1 an agency, at any time (before or after commencement or  
2 completion of any improvements or acquisitions to be financed)  
3 and shall be upon terms and conditions the department finds to  
4 be advantageous. In each case of a written request by the  
5 judiciary to participate in the financing agreement program, the  
6 department shall implement the request; provided that the  
7 related financing agreement shall be upon terms and conditions  
8 the department finds to be advantageous. Any financing  
9 agreement entered into by the department without the approval,  
10 or by an agency without the approvals required by this section  
11 shall be void and of no effect. A single financing agreement  
12 entered into by the department may finance a single item or  
13 multiple items of property to be used by multiple agencies or  
14 may finance a single item or multiple items of property to be  
15 used by a single agency. If the financing agreement is by the  
16 department, the department shall bill any agency that benefits  
17 from property acquired with the proceeds of a financing  
18 agreement for the agency's pro rata share of:

- 19 (1) The department's costs of administration of the  
20 financing agreement program; and



1           (2) The financing costs, including the principal and  
2                   interest components of the financing agreement and  
3                   insurance premiums,  
4 on a monthly or other periodic basis, and may deposit payments  
5 received in connection with the billings with a trustee as  
6 security for the financing agreement. Any agency receiving such  
7 a bill shall be authorized and shall pay the amounts billed from  
8 available moneys.

9           If a financing agreement is by an agency, the agency shall  
10 deposit on a monthly or other periodic basis with the  
11 department, payments from available moneys with respect to the  
12 agency's financing costs, including the principal and interest  
13 components of the financing agreement and insurance premiums,  
14 which payments the department may deposit with a trustee as  
15 security for the financing agreement. The department may bill  
16 an agency for the department's costs of administering the  
17 agency's payments and the agency receiving such a bill shall be  
18 authorized to and shall pay the amounts billed from available  
19 moneys."

20           SECTION 6. Section 36-32, Hawaii Revised Statutes, is  
21 repealed.



1       ~~["§36-32 State educational facilities improvement special~~  
2 ~~fund. (a) There is created in the treasury of the State the~~  
3 ~~state educational facilities improvement special fund, into~~  
4 ~~which shall be deposited a portion of all general excise tax~~  
5 ~~revenues collected by the department of taxation under section~~  
6 ~~237-31. The special fund shall be used solely to plan, design,~~  
7 ~~acquire lands for, and to construct public school facilities and~~  
8 ~~to provide equipment and technology infrastructure to improve~~  
9 ~~public schools and other facilities under the jurisdiction of~~  
10 ~~the department of education, except public libraries. In~~  
11 ~~addition, activities of the department of education intended to~~  
12 ~~eliminate the gap between the facility needs of schools and~~  
13 ~~available resources shall be eligible for funding from the~~  
14 ~~special fund. Expenditures from the special fund shall be~~  
15 ~~limited to projects authorized by the legislature and shall be~~  
16 ~~subject to sections 37-31, and 37-33 through 37-40.~~  
17 ~~Appropriations or authorizations from the special fund shall be~~  
18 ~~expended by the superintendent of education.~~

19       ~~(b) There is established within the state educational~~  
20 ~~facilities improvement special fund a separate account, to be~~  
21 ~~known as the lease payments for schools account, for lease~~  
22 ~~payments required by financing agreements entered into by the~~



~~department of education pursuant to this section and sections 37D-2 and 302A-1506. The lease payments for schools account shall be funded by legislative appropriations and expended by the superintendent of education. Expenditures from the lease payments for schools account shall be exempt from chapters 103 and 103D and are restricted to lease payments on new schools included within the department of education's current six year capital improvement programs and for which.~~

~~(1) The legislature adopted a concurrent resolution directing the department of education to:~~

~~(A) Build a new school in a specific geographic area using the design-build method; and~~

~~(B) Pursue the use of a financing agreement to build the new school; or~~

~~(2) The legislature appropriated planning and design funds and specified that the remainder of the costs necessary to complete the project are eligible for funding through a financing agreement;~~

~~provided that any school to which the legislature has appropriated planning and design funds prior to July 1, 2007 and for which a private developer is willing to enter into a lease purchase agreement with the department of education within~~





1 ~~twelve months of July 1, 2007 is exempt from the requirements of~~  
2 ~~{paragraphs} (1) and (2).~~

3 ~~(c) The department of education shall submit an annual~~  
4 ~~report to the legislature that shall include a financial~~  
5 ~~statement of the special fund, the lease payments for schools~~  
6 ~~account established under subsection (b), and the status of~~  
7 ~~projects undertaken pursuant to this section, no later than~~  
8 ~~twenty days prior to the convening of each regular session."]~~

9 SECTION 7. All moneys collected pursuant to section  
10 237-31, Hawaii Revised Statutes, deposited into the state  
11 educational facilities improvement special fund established  
12 under section 36-32, Hawaii Revised Statutes, and remaining  
13 unencumbered on balance in that special fund shall lapse to the  
14 credit of the general obligation bond fund on July 1, 2023.

15 PART III

16 SECTION 8. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 9. This Act shall take effect upon its approval;  
19 provided that:

20 (1) Part II shall take effect on July 1, 2023;

21 (2) The amendments made to section 36-27(a), Hawaii

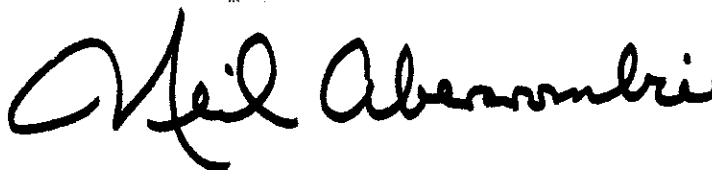
22 Revised Statutes, by section 3 of this Act shall not



1 be repealed when that section is reenacted on June 30,  
2 2015, pursuant to Act 79, Session Laws of Hawaii 2009;  
3 and

4 (3) The amendments made to section 36-30(a), Hawaii  
5 Revised Statutes, by section 4 of this Act shall not  
6 be repealed when that section is reenacted on June 30,  
7 2015, pursuant to Act 79, Session Laws of Hawaii 2009.

APPROVED this 21 day of JUN 21, 2013

A handwritten signature in black ink, appearing to read "Neil Abernethy". The signature is fluid and cursive, with the first name "Neil" written in a larger, more prominent script than the last name "Abernethy".

GOVERNOR OF THE STATE OF HAWAII